

CITY OF FREDERICK
ZONING BOARD OF APPEALS
MEETING MINUTES
March 22, 2011

MEMBERS PRESENT:

STAFF PRESENT:

Mr. Jim Racheff
Ms. Gail Colby
Mr. Ed Hazlett
Mr. Marvin Kennedy
Mr. Philip Dacey
Gabrielle Dunn, Division Manager of Current Planning
Rachel Depo, Assistant City Attorney
Brandon Mark, City Planner
Lea Ortiz, Office Manager

ANNOUNCEMENTS

For the benefit of the audience and especially the applicants, Mr. Racheff, Chairman, introduced everyone by name and department and explained the Zoning Board of Appeals process.

APPROVAL OF MINUTES:

October 26, 2010 Minutes

MOTION: Gail Colby moved to approve the October 26, 2010 hearing minutes as published.

SECOND: Mr. Kennedy

VOTE: 4-0

APPROVAL OF 2011-2012 Zoning Board of Appeals Schedule:

MOTION: Mrs. Colby moved to approve the 2011-2012 Zoning Board of Appeals Schedule as published.

SECOND: Philip Dacey

VOTE: 4-0

GENERAL PUBLIC COMMENT

There was no general public comment.

CASES TO BE HEARD

CASE NO.: ZBA11-70V

LOCATION: 712 Fairview Avenue

APPLICANT: Regina Ritenour

DESCRIPTION:

The Applicant is requesting approval of a variance to allow for the construction of a front porch with a gabled, cathedral style roof that does not meet the 25 foot front yard setback requirement for the property per Section 405, Table 405-1 of the Land Management Code (LMC).

BACKGROUND INFORMATION:

The subject property, 712 Fairview Avenue, is located between Rosemont Avenue and 7th Street and is zoned R6. According to Maryland State Department of Assessment and Taxation (SDAT) data, the 1,248 square foot home was built in 1945 and the lot is approximately 6,250 square feet (0.143ac) in size.

The proposal is to replace the existing 6' x 4' porch at the front entrance to the home with a new, 8'x5' porch. The existing porch is comprised of a concrete slab and vertical supports for the aluminum awning. The proposed porch will also be a concrete slab, covered by a gabled-roof with a cathedral ceiling and support columns.

The request is for a variance to Section 405, Table 405-1 of the LMC which requires a front yard setback of 25' for principal structures within the R6 zoning district. The Applicant is requesting approval for a variance of 5' from the 25' required front yard setback for porch.

The existing front porch is nonconforming with respect to the front setback as established in Section 405, Table 405-1. The existing porch encroaches into the required front yard by approximately 4', for a front setback of only 21'. As a nonconforming feature, the structure is subject to Section 900, Nonconforming Features, which states that any existing structure not conforming to the maximum density, yard or height requirements of this Code may be continued so long as it remains otherwise lawful, provided no such structure shall be modified so as to increase its nonconformity. Further, that any enlargement, extension or structural alteration shall conform to all current requirements of the LMC. Accordingly, removal and reconstruction of the porch must comply with the current regulations.

It should be noted that Section 606, Table 606-1 allows for the encroachment of several types of architectural enhancements within yards including roofed stairways and/or stoops that are unenclosed and cantilevered to encroach into the front yard up to 3'. In reviewing this request, Staff has considered this allowance, however, has concluded that the existing and proposed porches do not qualify for this encroachment on the basis that they are not cantilevered which is

the defining characteristic for the encroachment. Further, that the proposal best meets the definition of a "porch" per Section 1002 and therefore, cannot be considered a "stoop."

Prior to filing this variance application, the Applicant requested a staff level yard modification as permitted by Section 606(j)(2) of the LMC. According to this section, the Planning Department may modify the front yard required by Section 405 in primary developed areas where actual front yards on a majority of the lots within the block differ from the required front yard in the district. In such cases, the front yard may be the average depth of existing front yards in the block, or the average depth of the existing front yards on the two lots immediately adjoining, whichever is greater. The purpose of this subsection is to allow for infill development and redevelopment that is consistent with the surrounding community.

After analyzing the proposal according to the criteria established in Section 606(j)(2), Staff determined that the porch would not meet the requirements for a staff level approval. In summary, the average front setback of the lots on the block is 19' with an average setback from Fairview Avenue of 21.7'. However the average front setback of the two properties immediately adjoining the property is 26'. As noted above, Staff may modify the front yard setback to average the setback of the block, or to the average setback of the two lots immediately adjoining the property, whichever is greater. Since the front yard setback of the two lots immediately adjoining the property is greater, the proposed porch does not meet the requirements for a staff level yard modification.

Mr. Mark proceeded to review the decision making criteria for variance approvals as itemized in the staff report.

STAFF RECOMMENDATION

Based upon the responses provided by the Applicant, and the finding of facts, Staff recommends against the request for a variance of 5 feet to the required 25 foot front setback requirement for single family residential structures in the R6 zoning district, based on the following conclusions:

1. That the lot is regularly shaped and does not possess unique characteristics that would make the strict application of the LMC result in peculiar or unusual practical difficulties to, or exception to or undue hardship upon, the owner of the property.
2. That granting the variance will confer the Applicant special privilege that is denied by the LMC to other lands or structures in the same district in that it will allow the structure to encroach the front setback for the R6 zoning district.

APPLICANT PRESENTATION:

Ms. Regina Ritenour, applicant resides at 712 Fairview Avenue, stated she talked to Mr. Mark and she understood that the interpretation is based on the strict regulations in the Land Management Code for front yards. She commented that her goal was to make repairs that were needed and upgrade the existing porch. She felt that using her front porch for access to the house is much easier than using the back porch because the back porch has approximately seven steps and the front has one step. She mentioned that her front porch slab is cracked and would need to

be replaced and the awning is damaged from the snow. She also noted that the foundation would need to be fixed and she wanted to have everything done at the same time.

DISCUSSION:

Mrs. Colby asked if the porch covering could be replaced in the same footprint. Mr. Mark answered by saying she could replace the covering "in-kind," meaning that it would have to be an aluminum awning.

There was discussion on the awning and if the applicant could make it bigger. Mr. Mark stated that the current awning encroaches into the setback requirement by 4 feet.

Mr. Hazlett asked if the applicant could cantilever the porch. Mr. Mark indicated that it could encroach 3 feet into the required front yard if it was cantilevered. Ms. Ritenour mentioned that in the staff report it indicates that the porch is 6' by 4' but it is actually 6' by 5'. She also mentioned that she could live with a 6' by 5' porch.

There was discussion as to whether the Commission could allow the applicant to increase the width of the porch to the same depth as existing if it is nonconforming. Ms. Dunn stated that increasing a nonconformity should be considered not only with regards to increasing the extent to which a certain requirement isn't met, for example, along a certain plane, but should also be considered with respect to the amount of the structure which does not conform.

Ms. Ritenour indicated she could live with the same 6' by 5' structure but would like a single gable that would blend in with the new roof.

Regarding the discussion on the materials, Ms. Depo stated that the regulations under Section 902 which pertain to in-kind replacement are not applicable to this case due to the zoning as indicated by Staff, and she briefed the Board that in Section 902(a) of the Land Management Code, an existing structure not conforming to maximum density, yard or height requirements of this Code may be continued so long as it remains otherwise lawful, provided no such structure shall be modified so as to increase its nonconformity or to make it less suitable for a permitted use in that district.

Ms. Ritenour mentioned that there is a crack in that slab that needed to be fixed and wanted to understand the fact that if she has to remove it she could build another slab 3 feet out of the house. Staff said the slab could be replaced and could encroach up to one-third of the entire front yard provided that it was not roofed. Ms. Dunn added that the issue is with the roof structure that creates the restriction on the setback.

Ms. Ritenour felt that the only way she could get an approval for a variance is to have the porch with no covering and she did not prefer doing it that way.

Mr. Hazlett asked staff in Section 606, Table 606-1 if item (D) of the table could be applied for canopies and nonenclosed structures above sidewalks. Ms. Dunn noted that the section is intended for encroachment in the public right of way.

Mr. Hazlett suggested putting an awning up to cover the porch. Applicant did not want to put an awning up because it would be much maintenance and have to put it down every night.

Ms. Dunn noted that routine maintenance and repairs to a nonconforming structure are permitted per Section 906.

Mr. Racheff wanted to know if Section 909, Intensification of Nonconforming Use, could apply. Ms. Dunn explained that this is not a "use" issue but a structure issue and that the language of Section 909 pertains, for example, to an applicant who owns a single-family home in a district where residential is not permitted and wanted to convert it to a multi-family home.

Mr. Hazlett asked the applicant if the porch had to be destroyed to repair the foundation. Ms. Ritenour said that her structural engineer recommendation for the foundation was to fill in the blocks but if they find anything else significant to the porch slab they would have to remove it and if that happens she would be left with a 3 foot porch and she is concerned about that scenario. Commissioners stressed that she could have the slab, it is the roof that is the issue.

PUBLIC COMMENTS:

There were no public comments.

MOTION: Mrs. Colby moved to deny case no. ZBA11-70V for a variance to allow for the construction of a front porch that does not meet the 25 foot front setback requirement per Section 405-1 Table of the Land Management Code finding that:

1. The lot is regularly shaped and does not possess unique characteristics that would make the strict application of the LMC result in peculiar or unusual practical difficulties to, or exception to or undue hardship upon, the owner the property.
2. That granting the variance will confer the Applicant special privilege that is denied by the LMC to other lands or structures in the same district in that it will allow the structure to encroach the front setback for the R6 zoning district.

SECONDED: Mr. Hazlett

VOTE: 4-0

The meeting adjourned at 8:15 p.m.

Respectfully submitted,

Lea M. Ortiz